

TOWN OF HAMPDEN PLANNING BOARD MINUTES

The meeting of the Hampden Planning Board was called to order at 7:00 p.m. on Wednesday, March 8, 2006, at the Hampden Municipal Building by Chairman David Caliendo.

Attendance: Planning Board Members: Chairman David Caliendo, Andrew Nelson, Michael Avery, Peter Frazier, Thomas Cavanaugh, Mort Syversen, Carrie Meo and associate member Tony Llerena.

Also in attendance: Town Planner Robert Osborne, recording secretary Rosemary Bezanson along with Applicants for tonight's hearing.

1. APPROVAL OF MINUTES (January 25, 2006 and February 8, 2006)

Member Avery made a motion to approve the minutes as written. Member Cavanaugh seconded the motion. The vote was unanimous.

2. OLD BUSINESS

A. Conditional Use/Site Plan Review – Cafua Management Co. – Construction of a 2,021 sq. ft. Dunkin Donuts restaurant with a drive-thru located at 76 Main Road North (currently the Big Apple convenience store) in a Village Commercial District (Tax Map 32, Lot 22). Previously Continued

Chairman Caliendo opened the item noting that it was continued from the January 25, 2006 meeting. As there were a number of items that the Board had asked the applicant to address he asked for a representative of the applicant to speak.

Tim Woodcock, Esq. from Eaton Peabody stated he is here tonight representing Cafua Management. Tony DaCosta with Cafua Management is present tonight, along with Brad Hart, PE and Mike Waugh, PE with J.W. Sewall Company the traffic engineers who have been involved with this project and Jodie O'Neil, PE from Plymouth Engineering, to answer any question that the board may have.

Mr. Woodcock moved directly to the traffic standards. There are several traffic standards in the ordinance. The first is article 4.1.7.3, this standard provides that there shall be safe ingress and egress to and from public and private roads, by providing adequate location numbers, and control of access points including site distances, turning lanes, and traffic signals if necessary. The ordinance also stated the factors to take into account are turning movements in ratio to traffic flow, proximity to intersections location access of off-street parking, provision of pedestrian traffic, access by emergency vehicles and minimization of pedestrian and vehicular contacts. There will be a designated entrance point and exit. This is a deep site to allow for on site queuing.

So that traffic is not backed up on the street.

There is allowance for north bound left turn traffic onto the site development. The site development allows for the linear distance of four cars to queue in the north-bound lane. It allows for vehicles to pass on the right, with one wheel on the paved shoulder. They did go out and check the width of Route 1A, they determined it can be widened to allow for bypass traffic of all types of vehicles. The public safety department is satisfied that the site is accessible by emergency vehicles. Under 4.1.7 section 4 provides that the layout and design of on-site vehicular and pedestrian traffic patterns shall provide for safe interior circular, access by emergency vehicles, separation of pedestrian and vehicular traffic and storage of plowed snow. Interior parking is next to the building itself. Article 4.2.3.5 provides that the proposed use will not cause hazardous traffic congestion on contiguous or adjacent streets. 300 trips in a peak hour, 2.5 actual automobiles a minute during that hour (average), was what the traffic projections are for this proposed site development. The traffic analysis finds that this would not overload the intersection. Mr. Woodcock noted by comparison to Hampden's proposed site the Bangor Dunkin Donut sites have more limited queuing and much higher average annual daily traffic counts. The counts are two to three times higher, depending on what site in Bangor you are speaking about. A MDOT traffic permit was required and approved for this site. They are proposing a painted/textured (center) median, to move northbound traffic to the right about five feet. They plan to widen the road to create a north bound 16 foot travel way, and four foot wide paved shoulder. Left turning (exiting) traffic's line of sight might be interrupted by current on-street parking arrangements on Route 1A. We discussed with Maine DOT, who owns the legal right of way, putting in a raised curb, in that area (from the proposed exit to the intersection of Western and Main Road) which would take care of the (on-street) parking issue. They have also proposed putting in a sidewalk, all the way from the entrance of the site to Western Avenue. (Gorrill Palmer's letter was referenced.) The traffic light at the intersection of Western Avenue, Canoe Club Road and 1A was discussed. A proposal was made for the board to have a limited review of the exiting traffic again after one year, following the granting of a certificate of occupancy. Follow the traffic for the one year period, the applicant would provide a traffic engineering report to the Planning Board identifying accidents if any and their cause, and the traffic engineer and the Town would determine if changes are necessary to the approved site plan. Planning Board would have a chance to look at the site application again. It was noted that some minor adjustments to the phasing of the traffic light might not require that the Board review the plan. The left turning traffic issues were addressed.

Chairman Caliendo asked Mr. Osborne for his comments.

Mr. Osborne addressed the sketch that was on display depicting the three views of the site with different traffic movements superimposed on them. The plan demonstrates that the widened driveway can accommodate the drive-thru and by-pass vehicles on site. The plan demonstrates that the widened northbound lane and shoulder can accommodate four vehicles in a left-turn queue, waiting to enter the site, and allow a full size tractor trailer truck to by-pass on the right within the 20 foot perimeter from

centerline to the outer edge of the shoulder. The plan demonstrates that larger vehicles can be accommodated entering the site. Mr. Osborne spoke about the textured/painted median. He indicated that the purpose of the median is to direct northbound traffic five feet to the right closer to the right side of the lane. He noted that traffic signage at the intersection would make northbound traffic aware of the median. He indicated that applicant has done a number of things to improve sight distance for exiting vehicles looking south including the proposed curbing on Route 1-A to discourage on-street parking and the median which helps create a visual channel looking south. He noted that the exiting, left turning vehicles would occasionally experience visual and/or physical interference from southbound traffic standing at the intersection and might need to wait, but this circumstance is not unreasonable or unfamiliar as long as it is momentary in nature. The traffic analysis indicates that traffic clears out of the intersection relatively quickly. Nevertheless, exiting, northbound traffic appears to present the greatest challenge to safe egress given overall site distance to the south and left turning traffic on to the site, and this is why applicant has proposed to revisit that question a year after the certificate of compliance has been issued for the project.

Mr. Osborne reminded the Board that this item has received a Certificate of Appropriateness from the Historic Preservation Commission. He indicated that the Commission had recommended the design to have a larger green area to the front of the site development and the building to be set back as proposed here and that the building itself met both the design criteria for preservation and the additional setbacks.

Mr. Osborne indicated that the location of the parking and the drive thru window to the side and rear of the site are as required by district standards. He noted that the building itself was relatively small and creates impacts not unlike a residential sized structure for height and volume. He indicated that the plan and presentation appears to meet the standards for conditional use, site plan review and drive-thru business. He stated that with the noted conditions and the proposed plan, traffic and drainage analysis that Staff would recommend approval.

Chairman Caliendo thanked Mr. Osborne, and asked for questions from members of the board.

Member Cavanaugh asked if the proposed raised curb and sidewalk would eliminate any legal parking. Is that business losing parking spaces.

Mr. Osborne stated that all of that area is in the State right of way. None of the parking is expressly legal. They are parking directly across what should be the town's sidewalk.

Member Avery asked what is being proposed for the re-construction of roadway road bed for the width of the improvements. Do we have construction details?

Brett Hart with James Sewall Company addressed Member Avery's question. Everything has to meet with MDOT's standards for design and materials. He stated that

they will be working with MDOT, who will review it prior to construction.

Member Syversen asked if the bakery and Curves was brought into the traffic analysis.

Mr. Hart responded that the proposed road widening is completely within the State right of way. There will be impacts on those businesses, but limited to the parking lot and the side of the building where parking is not permitted.

Member Frazier made a comment as to this application, he cited two concerns, one turning left out of the site will be impossible during peak hours, and turn left out of Curves and the bakery, across the street will be impossible.

Left turning traffic was discussed with Mr. Hart.

Mr. Michael Waugh senior traffic engineer with J.W. Sewall Company, spoke about the peak (traffic) 15 minute interval. They have taken four times the peak 15 minute interval into consideration in all their capacity analysis. Curves did not appear to have the same peak hour traffic that (Dunkin Donuts) the proposed site has. Mr. Waugh stated that he does not think that there is going to be a big problem with left turning traffic.

There was some discussion with Mr. DaCosta not heard on the tape recording. Mr. DaCosta indicated the actual number of customers that they expect at this location in a peak hour is below the 150 that the traffic design is based on. He indicated that 150 is based on their busiest Bangor facilities where there is as much as twice the background traffic as there is on Main Road in Hampden.

Tim Woodcock stated the left turn out of Dunkin Donuts is something that they propose to monitor. He assured that, they would be willing to have this site plan reviewed after a one year time period after certificate of occupancy is issued. If there is a problem, and if there is a proposal to address the problem in a way that would alter the site plan as approved by this board, then it would come back to board for further analyses and action.

Chairman Caliendo stated that he was glad to see the time and effort the applicant has spent into developing this site, the traffic study, and the site plan. Their allowance to come back after a one year period and have the site plan revisited is a very good idea.

Mr. Osborne stated that what was discussed is the town would receive a report a year down the road reporting on the left turning movements off the proposed site. We would see if there are problems or issues at that time. The wording on the condition was discussed. The draft that was worked on by Mr. Woodcock was passed around. Staff also recommended some of the other conditions of approval in the staff memo. The texture median was discussed. MDOT Victor Smith was involved in the conversation with regard to the median.

Member Syversen asked what would happen if the Planning Board re-visited the site

plan after the year.

Mr. Woodcock stated that if modifications are recommended in the study that would require a change to the site plan, then that would require the planning board to review the site plan again with the proposed and recommended changes. Some of the wording to the approval and conditions was discussed. The report that would come back to the planning board was also discussed, and what actions would be taken.

There was someone in the audience wanting to speak again. Chairman Caliendo indicated that the public hearing was held last month (January 25, 2006) and the chairman had closed the public hearing at that time. The public hearing was noticed for that date.

Member Avery made a motion that the application meets the standards for Article 4.2 conditional uses. With the conditions that this board require: The split entrance/exit demarcation. Delineation of the exterior side of the shoulder, as shown on the plan, by painted stripping. The inclusion of the raised curb, and sidewalk from Western Avenue to northerly property line of the site development. The establishment of a center median as indicated on the plan, a grinded and painted median vinyl or plastic application, with the fall back of the possible of using a texturing of the asphalt, and applying paint to that. The establishment of a sign visible to north bound travelers alerting them the median. Signage and stripping details would be subject to MDOT final approval. Conditioned on re-visiting the application after one year, (as written in the addendum provided by Eaton Peabody in the application for Cafua Management). The motion was seconded by Member Cavanaugh. There was discussion of the maintenance of the median. The vote was seven in favor and none against the motion to approve the conditional use. Member Avery yes, Member Cavanaugh yes, Member Frazier yes, Member Llerena yes, Member Meo yes, Member Nelson yes, Chair voted yes.

Member Avery made a motion that the application meet Article 4.1 site plan, Member Cavanaugh seconded the motion. The vote was seven in favor and none against the motion to approve.

B. Major Subdivision Final Plan review – M & D Real Estate, LLC – Request approval of Madison Way Subdivision, a 6-lot 16.24 acre subdivision with public improvements located on the south side of Shaw Hill Road at Miller Road in a Rural District (Tax Map 7, Lot 86). Previously Continued

Chairman Caliendo opened the item noting that it was continued from the February 8, 2006 meeting. As there were a number of items that the Board had asked the applicant to address he asked for a representative of the applicant to speak.

Darrell Ginn, PLS representing M & D Real Estate stated that at the previous meeting we discussed a drainage easement for the new drainage coming off of Shaw Hill Road. Don Hanscom and M & D Real Estate came to a mutual agreement by trading a portion of the field for a suitable lot number six. Note thirteen has been added to the recording

plan mylar. The fee in lieu of open space in the amount of \$3248.00 was discussed.

Mr. Osborne indicated that the final subdivision plan was complete. He stated that the drainage issue that was previously noted had been resolved because an easement had been secured from Mr. Hanscom. He suggested that the result of the plan change (due to the proposed land swap) was an improvement in the configuration of one of the proposed lots to site a residence. He indicated that the drainage easements that are found on the subdivision address drainage considerations from Shaw Hill Road and the proposed Audrey's Estates directly north of this site. He noted that the fee-in-lieu of open space is the only outstanding feature remaining. He recommended that the board approve the plan as it meets the standards for final plan approval conditioned on receipt of fee in lieu of \$3,248.

Member Syversen made a motion to approve the final subdivision plan with the condition that the fee in lieu of open space of \$3248 be received by the town. This motion was seconded by Member Llerena. The vote was seven in favor and none against the motion to approve Madison Way Subdivision.

C. Major Subdivision Final Plan review – M & D Real Estate, LLC – Request approval of Audrey's Estates Subdivision, a 14-lot 54.82 acre subdivision with public improvement located on the northeast intersection of Shaw Hill Road and Miller Road in a Rural District (Tax Map 7, Lot 69) –Previously Continued

Chairman Caliendo opened the item noting that it was continued from the February 8, 2006 meeting. As there were a number of items that the Board had asked the applicant to address he asked for a representative of the applicant to speak.

Darrell Ginn, PLS representing M & D Real Estate stated that the Miller Road improvements and the alteration of the proposed open space are the only changes to the subdivision from last month's preliminary plan but that the drainage easement on Mr. Hanscom had also been secured which directly addressed a concern raised at the previous meeting.

Mr. Osborne indicated that the final subdivision plan was complete. He stated that the drainage issue that was previously noted had been resolved because an easement had been secured from Mr. Hanscom. He indicated that the drainage easements that are found on the Madison Way Subdivision address drainage considerations from Shaw Hill Road and Audrey's Estates. He noted that the plan includes work on Miller Road and Shaw Hill Road to re-work the ditches to better convey drainage in those areas and it also includes two new culverts under Shaw Hill Road. He noted that Town Council had voted to accept the proposed open space for this subdivision based of the wider access of 66 feet. He recommended that the board approve the plan as it meets the standards for final plan approval

Member Syversen made a motion to approve the subdivision this motion was seconded

by Member Llerena, the vote was seven in favor and none against the motion to approve Audrey's Estate Subdivision.

D. Site Plan Review – O'Donald's Concrete, Inc. – Request for construction of an 11,136 sq. ft. building for a service business – Business park use located on 68 Carey Circle (off Route 202 Bypass) in an Industrial Park District (Tax Map 10-B, Lot 18) Previously Continued

Chairman Caliendo opened the item noting that it was continued from the February 8, 2006 meeting. As there were a number of items that the Board had asked the applicant to address he asked for a representative of the applicant to speak.

Renee O'Donald of O'Donald's Concrete stated that the new revised site plan shows the town easement where the temporary cul-de-sac is located. This is a service business use. No large retail tenants are proposed. It provides adequate parking.

Mr. Osborne indicated that the revised plan addressed a number of omissions that were noted on the previous plan. It addresses the cul-de-sac. It addresses the topographic detail around the proposed building. It proposes planting and landscaping as required. He recommended that the plan is now complete and that the Board approve the plan as it meets the standards for site plan review.

Member Avery made a motion that the application before the Planning Board meets the requirements for site plan review. This motion was seconded by Member Cavanaugh. The vote was seven in favor and none against this motion.

E. Conditional Use/Site Plan Review – Vaughn Thibodeau & Sons, Inc. – Request for mineral extraction of a 9.4 acre area to extract approximately 600,000 cubic yards of rock material over a six year period. The application also includes a reclamation plan. The site is located off Ammo Park Drive in an Industrial 2 District (Tax Map 10, Lots 61 and 56-3). – Public Hearing – Previously Postponed

Chairman Caliendo opened the public hearing, asking for proponents, then opponents and anyone with question or comments. Please come to the podium

Ed Gould, attorney with Gross, Minsky, Mogul in Bangor, here tonight representing Vaughn Thibodeau & Sons on this application. Mr. Gould stated that Fred Marshall from Plymouth Engineering was present for tonight's meeting, along with Mike Thibodeau, Wilbur (Bub) Saunders, and others of Vaughn Thibodeau and Sons.

Mr. Gould stated that the application is fairly straight forward itself. It's not straight forward factual, legal and political issues we are dealing with, but at least the application itself is straight forward. Mr. Gould stated he has had the benefit of reading both Mr. Russell's opinions as well as Mr. Osborne's memorandum. The application is a permitted use in this zone, subject to the conditions set forth in the ordinance, which

Vaughn Thibodeau and Sons are more than happy to comply with whatever reasonable conditions that this board might impose on this application. But it is a permitted use that we are dealing with here and that has to be our starting point.

The company has been working with Mr. Osborne off and on for several months regarding this project. They would like to move forward, they are ready to move forward. He addressed the white elephant in the room which is the later item on the agenda regarding the proposed amendment to the ordinance. As you know the ordinance hasn't been amended, we are dealing with the current ordinance, which says that this is a permitted use. The ordinance is something to be dealt with at a later point in time and frankly it is not part of your consideration right now. He would simply ask that you treat this application as you would treat any other application that comes before the Board, give it fair consideration, deal with it on it's merits, please vote on it tonight. There is no reason to wait any further. Vote it up or down on its merits. If you have any questions of me or on any of the technical aspects of the project, we have the company and the engineering representatives to address any questions you might have. Thank you.

Chairman Caliendo asked if there was anyone else wishing to speak in favor of this application.

Mr. Richard Cox, Fuller Road, Carmel. This property lies between the Northern Maine Junction railroad track, there's Lane Construction which has a big pit there, which was formerly Henry Page's, and then you have Odlin Road, then you have an outfit of Thibodeau's there, and across the interstate is this site. I think it's a good thing for this to happen, its all of the same type of thing from the railroad tracks in Bangor, all the way over it's the same type of soil thru there. Years ago, when I (Mr. Cox) bought this property, I was 16 years old, at that time the people he bought it from Norman and Duncan Gillis. At that time way back years ago, these people started out with a horse and buggy type thing and they hauled gravel out of there. After that they got a dump truck. In one respect, I do not know what laws have been changed in State or what laws have changed in the towns or what they have changed on it (the property in question). When I bought that property you would have what they call farmers, grandfather's rights on the property to do such a thing as excavation. I think it a good thing. I am getting ready to retire, and would like to bring it to a close, as long as it meets the approval of the board, and it meets the requirements that you put upon it. Thank you.

Chairman Caliendo asked if there was anyone else wishing to speak in favor of the application. No one responded. Chairman Caliendo asked if anyone who would like to speak in opposition to the application. No one responded. Is there anyone who would like to make (with) general questions or comments. No one responded. Hearing none, Chairman Caliendo closed the public hearing.

Chairman Caliendo asked to hear from Mr. Osborne.

Mr. Osborne, the town planner, stated this application is deemed to be a permitted use. You have in your packet (not attached to this application but attached to the ordinance amendment) indicating from Tom Russell (town attorney) that he deemed this, this use to be a permitted use in the District. The rationale for that, was the I 2 District, if you look at the permitted uses, the very first phrase says "any industrial and commercial use". Mr. Russell deemed that, that was such a broad sweeping phrase, that it also included mineral extraction as a permitted use. The question for the board is not whether the use is permitted, or even one of, if this use is the sort of thing that ought to go on in this neighborhood or that neighborhood, it's more simply a question of these ordinance regulations that are found in article 4.9 the excavation, removal and fill of lands, that place both mandatory and volunteer (optional) conditions on the, at the board disposal for applications such as this. In the staff memo you will find on page 8, the rule for article 4.9 is printed out, the ones that I deemed to be relevant (see attached memo) to the board review. I point out that 4.9.2 and point 3 have to do with fill and grade projects that didn't require Planning Board approval. That is why he dropped those items out of description. Notice the conditions that have to be met are number one the smallest amount of bare ground shall be exposed for the shortest time feasible. It talks about temporary ground cover being used, diversion silting basins, terraces and other methods to trap sediment, that lagooning shall be conducted, not create fish trap conditions. Going down thru the optional conditions, one thing that is relevant is number eight, the cleaning, repair and/or resurfacing of streets used in removal of said activity. One of the kinds of things that I think would be a very reasonable condition to place on a operation like this, is that heavy truck full of excavation from this facility aren't tearing up the streets during this freeze/thaw situation we are in right now. One of the things the Planning Board could look at is to condition the approval on something to the effect that when town roads are posted, that this road (even though it is a private street) would, operate under those same conditions as town posted roads. If you had some reason to feel more concern that there was no way to conduct this activity without damage to the street, there could be some kind of a motion to obligate the applicant to repair damage that they may have caused. The perimeters of how you would determine the street was like before they started and so forth, but somehow have to fall into a motion. Myself or the board is not familiar with an application like this, I think the best thing to do is throw it open for discussion, to get some questions answered. I note that Fred Marshall with Plymouth Engineering is here, as is Ed Gould, as is Mr. Saunders and others, to get some pretty good answers. Some of my thoughts are there ought to be some conditions added to the approval to do our best to preserve the Ammo Drive, but other than that, let's see where our conversation takes us.

Chairman Caliendo thanked Mr. Osborne. He asked for questions from members of the board.

Member Avery asked what the proposed hours of operation are at this point in time. Mike Thibodeau stated that it would be from 7 a.m. to 5 p.m. weekly.

Chairman Caliendo asked if it would be five (5) days a week, seven days a week.

Mike Thibodeau, Winterport, one of the issues brought up was the Ammo Park Road, it's not the best road in Hampden, and they currently patch the pot holes with dirt. They are more than willing and will be offering to pave from our entrance back to Odlin Road, so that not only our equipment but the other trucking firm that is in the park does not have to pound over the road. Of course that would be up to the owners of the property whether they want to accept that offer or not. Mr. Thibodeau stated they have a nice set of buildings there, we are not into staving up the road and mom beating her car across it every morning, he would be in trouble, that's the reality.

Chairman Caliendo asked what they were going to do, what are you excavating?

Mr. Thibodeau stated they are taking rock out of the pit. We pave streets and have a ready mix concrete operation on the Odlin Road. That's an aggregate reserve, we would like to take and remove the rock. You can see the City of Bangor is built on a clay pit. We feel this is a good opportunity to fill that back in, it's ready for re-development down the road we have a nice piece of property in that park. It is a piece of land locked land currently.

Chairman Caliendo stated just to sum up the project you are going to be extracting 600,000 yards of stone that you are hauling from that site, to your other site on the Odlin Road, for processing to use in aggregate and making your concrete.

Mr. Thibodeau stated so we can build you a new school here in Hampden.

Chairman Caliendo asked if this involves drilling and blasting, and how that works.

Mr. Thibodeau stated that yes it does. The State of Maine regulates drilling and blasting. I do not want to bring up anybody else's operation, but this is a very small operation compared to some of the others in the State. 600,000 yards of rock, this is not a major operation, our own operation in Prospect would dwarf this. This is a small operation. We take nearly that a year out of Prospect.

Chairman Caliendo stated, help us out, we are layman, will there be (from the blasting) a lot of noise, will there be dust blown in the air?

Mr. Thibodeau stated this all falls under State guidelines. The blast size, we're shooting some place around 10,000 yards at a time in Prospect. He has an idea that they will shoot 4 or 5000 yards once they get the hole opened up, at a time here (Hampden location). Again, I do not want to bring anybody else's operation up but, it is small shots compared to what might be going on in other areas.

Chairman Caliendo asked if Mr. Thibodeau could estimate how far away someone would hear or feel it?

Mr. Thibodeau stated that anybody that is not hearing or feeling it currently would not be

hearing or feeling it from our operation. Does that make sense?

Chairman Caliendo stated because it is already going on in that area?

Mr. Thibodeau stated less than a thousand feet away.

Member Meo asked how deep they would be going, drilling or excavating.

Mr. Thibodeau stated less than 60 feet, he thinks. I think this is somewhere in the neighborhood of 8 to 10 year operation. He does not think it would go beyond that, but be somewhat short of the 8 to 10 year projection.

Chairman Caliendo stated that in the current ordinance that permitting is for 3 years, with additional 3 years, totaling six years.

Mr. Osborne stated that this is something the board needs to evaluate, how they read that rule. My thought is that you ought not to propose more than you can accomplish in six years.

Mr. Thibodeau stated that he is not trying to put rules on himself, but you tell me, I can't open up more than X number of acres at a time; he's a pretty reasonable guy. I have a fill permit right behind it. I don't anticipate having all that opened up at any given juncture.

Chairman Caliendo asked if they plan to excavate and fill as they go.

Mr. Thibodeau stated yes. The unfortunate thing is we are all in a race, I'm in a race, and you are in a race. Because of the political ramifications here, it's kind of too bad; we could have and should have been in a better situation. He spoke with a few different people, we wouldn't have even been opposed to putting money into a joint account with the Town of Hampden, to guarantee that it gets filled back in, a per yard, every yard we took out, we put some in, every yard we put back in the hole take some out. Just so everyone would win. But now we are in a race.

Chairman Caliendo said Mr. Thibodeau; you are not in a race with us tonight.

Mr. Thibodeau stated that it is unfortunate. I don't feel like I am in a race with you, but you can understand where I am coming from.

Chairman Caliendo assured Mr. Thibodeau that the board will hear his plan without influence to other items on the agenda.

Mr. Thibodeau stated that he does appreciate that, and hopes that you can understand my position; we have spent some serious money to have these gentlemen working for them on this site and site plan.

Chairman Caliendo asked Mr. Thibodeau to tell the board what his plans are. We are not talking about putting restrictions on it at this stage, just trying to get a sense of what your goals and plans are. Do you plan to open it all at once or an acre at a time, two acres.

Mr. Thibodeau stated that they would need about half of it for it to be a workable operation. We would start on the end (indicated on the site plan map, on display) come this way, bring fill in behind us. As we opened it up with room to work.

Chairman Caliendo asked if they had rough numbers that he could give us an estimate on the truck traffic this is going to increase. How far down the road are you going? A mile? Two?

Mr. Thibodeau stated that they would not be on any public roads in the Town of Hampden. Mr. Thibodeau stated he could help us with the traffic count for Dunkin Donuts. We are bringing 100 trucks a day thru that intersection. In the summer time, approximately 100 loads a day out of the quarry are proposed.

Chairman Caliendo asked if it was a year round operation.

Mr. Thibodeau replied no. Seasonal. More or less. In the winter we may stockpile some.

Chairman Caliendo stated he did not realize blasting was going on in that neighborhood. He was not aware of that.

Member Avery said it's not on this property though.

Mr. Thibodeau replied it is on the opposite side of the interstate 95. They did some blasting on their property on the other side of the interstate, and the Town of Hermon got confused because someone called them asking where the quarry was. They wanted to know if I was starting a quarry in Hermon. He assured them he was coming to see the Town of Hampden.

Chairman Caliendo stated that Mr. Thibodeau had stated he was willing to set aside funds to guarantee the town, that if something should happen there would be sufficient funds to cap the fill. Could you outline that for the board?

Mr. Thibodeau replied he was bouncing around (not sure if he mentioned it to the town planner, Bob Osborne) for every yard he takes out make him escrow a dollar, for every yard he brings back in, you release the funds. We have been here a long time, we are not going to run and hide. If you drive down the Back Winterport Road there are a lot of pits down there, the only one that is filled back in is the one Vaughn Thibodeau and Sons dug.

Chairman Caliendo asked for other questions from Board members.

Member Cavanaugh had a curiosity question. When you take it all out and you fill in all back in then what is it useful for?

Mr. Thibodeau replied, anything you want to do.

Member Cavanaugh asked if you could sell it as a buildable, developable site.

Mr. Thibodeau stated absolutely.

Mr. Frazier asked if they had rock crushing, sizing on site. So all they would do is take the rough rock out, using Dynamite, a front end loader and a truck.

Mr. Thibodeau replied yes they do, but not on this site. They just want to remove the rock, keep it just as simple and easy for you guys as we can. We do own the major substantial building in the area. They bought the Larkin buildings with this in mind. They are not going to destroy that set of buildings.

Member Avery asked what kinds of material they would be back filling with.

Mr. Thibodeau stated they would use excavate material off of job sites, primarily till, clay, whatever comes off the job sites.

Mr. Osborne asked what the weight of the trucks would be, that you would be utilizing for hauling the stone.

Mr. Thibodeau replied that most of them would be 54,000 lbs, 10 wheeler dump trucks, Gross weight. They would be less then the trucks going into the freight terminal. Those trucks could weigh up to 100,000 lbs.

Chairman Caliendo stated a plain vanilla dump truck we see every day, in other words.

Member Frazier asked if the rock was being taken to their site on the Odlin Road. For crushing, sizing, for sale. They would come out of Ammo hang a U turn, and go back down Odlin Road. Can't make a short cut.

Mr. Thibodeau replied that the rock would be taken to their Odlin Road site. Some of it may go direct to a job site. Wished he could make a short cut.

Mr. Osborne stated that since Mr. Marshall was here tonight he could give what the pre- and post- development drainage, what it looks like.

Fred Marshall, from Plymouth Engineering introduced himself. He stated that they submitted three scenarios as part of the application. One is what the existing conditions are; granted most of the site is forested now wooded, not old growth, pretty young. Then we did an operation analysis, since it's a bowl the way it's designed, (going back

to the cross sections page on display) as the pit gets developed the theory is that there will be a road that kind of hugs the edge on a terrace and goes down. It may not be this precise location, but depends on the quality of rock as they excavate. Prior to operation once they clear the site, there is an erosion fence that goes around, that limits the disturbance, and in affect we are creating a slight berm around the entire pit so that any water, storm water, or dust, whatever is generated within the pit, stays within the pit. So nothing is flowing out. During the course of operation storm water falls are internally drained. Closure, the long term closure, we've slightly bowled the interior, so it will be grassed and fertilized with a cover, the drainage will not change because the storm water will not be going off the site any place else. There will not be any increase. The question was brought up at one point, that the storm water run off would be increased because you are changing it from a forested cover to a grass cover, that's true, but they are not increasing because the storm water will not be flowing off the site, it will remain inside, a large scale very shallow detention pond for lack of a better description.

Member Frazier asked what they would do once they dug the hole and it starts filling up with water?

Mr. Marshall stated that the ground water isn't that high, wells in that area are down at least 150 feet before they are getting any kind of yield.

Member Frazier asked, you are not going to hit any springs or anything?

Mr. Marshall replied that they hope not. We cannot guarantee anything, because he is not a geologist.

Mr. Frazier asked if it did fill up with water, does that mean you stop. Or do you pump it out somewhere.

Mr. Marshall stated he needed to defer to Mike (Mr. Thibodeau) Mr. Thibodeau answered Mr. Frazier's question (it was not picked up on the tape).

Mr. Frazier stated that we have a little adversarial position with the DEP.

Mr. Marshall stated that they are proposing to take demolition debris or something, take it off of Casella, so that they could put it in the pit, but we knew it would not be politically slippable (just was all said in good humor) everyone was laughing. Mr. Marshall stated he was just trying to lighten up. I'm sorry. I could see the horror on your face, like oh... no!

Member Syversen had a question about them going down 60 feet in depth, the contour lines show 120 feet, am I right or wrong?

Mr. Marshall replied at the high end, you are right. Over average it's no more than 60 feet through the cross section, because the site really slopes toward Bangor.

Member Syversen asked if they had a profile showing that type of contour. I am still reading 120 feet. That's not my concern as much as how deep you are going. I don't know how you are going to be able to maintain a situation where you are excavating part of it and back filling behind you, you can't maintain your slopes.

Chairman Caliendo stated that the grades would be very steep.

Member Syversen asked how big is this thing. (parcel)

Mr. Marshall replied nine plus acres over all.

Member Syversen stated you are going to have over half of it open at any one time, at least. Probably the whole thing will be open.

Chairman Caliendo stated not if we condition it to limit it.

Member Syversen replied, they couldn't use it, then.

Mr. Marshall replied there is also the reality that there is a whole vegetative buffer as required by the ordinance all the way around it, existing trees. There is some visual shielding in excess of 100 feet.

Chairman Caliendo asked what difference does it make whether open four acres or nine acres? Is there environmental impact? There are no site issues inside the industrial park.

Mr. Marshall answered no, but referred to Mr. Saunders for answers.

Bub Saunders, Winterport. Mr. Saunders stated that the guidelines under DEP, you can only have 15 acres open. Obviously we are trying to permit a little under ten. When you have fifteen acres open, five acres has to be in reclamation, five acres in stockpile, and five acres in active excavation. We won't be getting close to any threshold that the State regulation has. Even if we opened up the whole thing, 9.4 acres is the size. We would not be triggering any DEP regulations.

Chairman Caliendo clarified that the total parcel is nine point something acres and you have to reserve some of it for stockpiling.

Mr. Saunders replied that they were not going to have stockpiles, they would be hauling off, we are going to be reclaiming right behind. So we are actually doing above and beyond anything the DEP would require.

Chairman Caliendo asked when they mentioned stock-piling; it is stock-piling off site.

Mr. Saunders and Mr. Thibodeau confirmed stock-piling is off site.

Member Frazier stated that he presumed part of your plan is to bring fill back in, in the empty trucks, before they load with rock, if you can do it.

It was answered from the audience (not recorded on tape).

Member Syversen stated he wanted to re-visit the contour issue again. You are telling me that there is a 60 feet slope existing already over the extent of this pit area. You got existing contour lines on the left hand side of 190; on the right hand side are 178.

Mr. Marshall pointed out on the display map / cross section; he stated that basically they go from 180 to 180.

Member Syversen clarified they are going down 120 feet in depth. He stated that the data and documents you are presenting don't verify that data, they contradict you, I want to know why.

Mr. Marshall explained, he conceded that the over all depth was 60 feet, they are going down 120 feet.

Member Syversen stated that if you look at any kind of slope to retain that, he stated that this whole thing is going to be open.

Mr. Marshall stated to put it in scale, this is the Ammo Park, and this area is the proposed pit, it is not that big of an area. (he showed on the display map the area)

Chairman Caliendo asked about security. Is there fencing around this.

Mr. Marshall stated that access is through Thibodeau's office building site which is gated.

So it is gated.

Mr. Marshall stated that it is currently gated, and would be gated.

Chairman Caliendo stated you fall 60 feet you're dead, but you are saying 120 feet.

Mr. Marshall stated that the way the road goes around it creates benches, so every thirty feet vertical, effectively there's a bench. Mr. Marshall stated that people reading the signs going in the Ammo Park, they know they are not supposed to be there unless they are on business.

Chairman Caliendo stated creative nuisance. When he was a kid they would snowmobile all through that park, until the air-marshall's chased them out.

Chairman Caliendo asked if there were any further questions from members of the Board. It appears that the application is complete. There are a number of things in

approval we want to make sure we are all clear on. So the devil's in the details. Who is going to be brave on this one.

Mr. Osborne stated that the first thing that is at the heart of this question is the question about the time line. It seems important that the planning board not grant approval for something that takes a longer time period than contemplated in the ordinance.

Chairman Caliendo replied I thought we had made that clear, that it is a three year permit that can be extended once (for three years) then it would have to come back to the (4.9.7) I am sure the applicant has read it, and is clear. But I will read it in the record, no permit shall be issued for a period to exceed three years, you would have to come back, however, if requested such permit shall be renewed by the planning board for an additional three year period. Then it's over. So your business plan or excavation plan needs to be based on our current ordinances, on a maximum of six years period. Not eight, like your thoughts were. We do not need to condition the approval just a clarification here, we don't need to condition any time line. It is in the ordinance. The use is not in question, we have the letter from the attorney, the town's counsel makes it clear, and this is a permitted use, not even a conditional use. The applicant has volunteered on the record to be operated 7 to 5 week days only. They have described their methods of removal and processing, basically there are no processing other than what has to be done to remove the rock. The applicant volunteered to pave the road. He would need the owner's permission Mr. Thornton. Our (the board's) concern is not that you pave the road, what comes to light is this, if your heavy truck action causes the road to deteriorate to where only the trucks can pass, common sense applies, but we need to be careful with this, I guess we

(Un-audible from audience)

Chairman Caliendo stated he would be more comfortable with you (the applicant) maintaining the road.

Member Avery stated possibly conditioning it on maintaining the road, keeping it clean ...

Chairman Caliendo stated he did not think anyone felt that the cost be with you to pave the road.

Member Avery stated that under item 8, it is something that we have the discretion to address. Given that there are other operations on the roadway, I think it's reasonable to suggest that the road be maintained.

Chairman Caliendo stated that 4.9.6 item 8 cleaning, repair and/or re-surfacing of streets used in removal activity ... that is an optional condition, so that particular item yes, we would need condition any approval with that. One of the recommendations from staff was, seemed reasonable for the Ammo Drive be posted for weight limits during the seasonal freeze/thaw.

There was some comment from the audience that was not heard on the recording tape.

Mr. Osborne stated that his proposal was not that the road be posted, but that this applicant agrees that while the town's roads are posted, that the heavy truck traffic stops with regard to this site development, or operation. In other words it's not that you're posting this private road, because we do not have any authority to post a private street. The point is that, as you know, even a road that's paved pretty well, during these thaw periods is just like a soda cracker, it just crumbles when you drive something heavy across it. That was my suggestion that the board consider, that as a condition of the approval that the applicant agree not to run these heavy trucks across the road during days of the year that the town roads are posted.

Chairman Caliendo stated that while at the same time we are insisting they take care of the roads, and maintain them. If they want to beat them up (the roads) they fix them up.

(There was some discussion at the map on display in the council chambers that was not heard or recorded on the tape.)

Chairman Caliendo said a few feet from the bridge. Is the bridge a private bridge?

Mr. Osborne stated that the bridge is a state owned bridge; it is part of the interstate system. The bridge is not at issue here. The DOT folks tell us that you can take 100,000 pound truck across those bridges.

Chairman Caliendo stated he would leave that to the pleasure of the board whether we want to restrict the weight limits or time of usage where it is pretty clear we are going to be putting a condition this that the maintenance of the road is going to be their responsibility.

Member Cavanaugh stated he was thinking the same thing. He stated, if we have a winter like this winter has been, they have a chance to go in and make some money, because it's workable, are you traveling on any town roads? During this up and down thaw, in general. You run a lot of trucks. During this kind of weather, we have had potholes in January which we normally don't do.

(There was someone speaking from the audience that was not captured on tape.)

Member Cavanaugh asked if you are taking rock out, how far do you take it, to work it, to crush it.

Chairman Caliendo stated about ½ mile away.

Member Cavanaugh stated that he did not think we need to get in to posting for ½ mile distance, how much of that do you own, or is it a private road. If we condition it that he maintains the road. He can't travel over badly damaged roads, without damaging your vehicles too, right?

More discussion not recorded.

Member Frazier stated that he would think that the road responsibility would be between the applicant and the owner of the road. Why are we involved?

Mr. Osborne stated that because the concern that he had was the owner does not have a lot of control in this instance. These folks have a deeded right of access to this site development. But nobody in a million years when they wrote that deeded access ever imagined 100 trucks a day with 54,000 pounds in them, pounding across it (roads). That's why I am suggesting that some element of protection for Mr. Thornton's road wouldn't be an unreasonable thing for the planning board to be looking at.

Member Syversen asked if that would not be part of the condition that he maintains the road.

Chairman Caliendo said that's what we are talking about.

Member Meo stated that on the deed there's a utilities easement mentioned. She asked how they got access to that.

Mr. Osborne stated he was talking about the Larkin piece; it was Larkin that has a deeded right of way. The only reason this one has access is because of what was the Larkin piece. It is going out though that site development to get on the street.

(Member Meo had the utility easement clarified for her, the power and telephone poles)

Chairman Caliendo stated it says utility easement, New England telephone, Bangor Hydro and all these, if you look at 99 percent of all the deeds that are out there, you are granting to them the power to bring power to your house. So this is granting the Bangor Hydro the easement to bring power to their own operation, doesn't necessarily mean passing through to somebody else's to them, because there is no public way.

Chairman Caliendo noted the hour. He is looking for a motion. He told Member Llerena that he would not be voting on this item.

Member Syversen stated he would give it a try. I move that we approve as submitted conditioned on maintenance of the roadway, to not make it any (for lack of a better word) worse than it already is.

Member Avery stated that he would say under 4.9.6 item 8 in accordance with.

Member Syversen stated that 4.9.6 is part of the application and it's the write ups.

Chairman Caliendo stated that this is optional.

Mr. Osborne stated that this is the options.

Chairman Caliendo stated that if we want to include it we need to say it.

Member Syversen stated that being the case he is not ready to complete the motion, and asked to withdraw his motion.

Mr. Osborne stated that it would be reasonable for the motion to site 4.9.5 that it is subject to all of those standard conditions for an earth moving permit. He would note that one of those is that topsoil or loam shall be restored to a depth of not less than three inches and seeded. I am just saying that down the line when a code enforcement officer is trying to figure out what happened here, that you direct him to the part of the ordinance that you attached conditions to this approval.

Chairman Caliendo stated 4.9.6 we discussed item one. Item two they volunteered hours of operations seven to five, Monday thru Friday. There are no new temporary structures. They have described into the record their route of transportation. We discussed area and depth of excavation. They detailed out to us the provisions of temporary and permanent drainage. We did not talk about disposition of stumps, brush, boulders and other top cover that you are removing. What's happening to that?

Mr. Marshall stated they have a couple of options, one is to grind them, the other is to bury them some place in the pit, stock pile them for a while, and then put them back in as fill. One of the erosion practices we have is to do a mulch berm, and you screened it out.

Member Avery stated there's not going to be boulders, that's what you are looking for, right.

(Laughter)

Chairman Caliendo stated that item eight we have talked about, as well. 4.9.7 surety you are required to post a bond of \$100.00 per acre that's \$900.00. That's just a matter of the regulations that you are required to meet. We don't have to read that into the conditions.

Member Syversen stated he would try again. He moved that we accept as submitted with the understanding that all of 4.9.5 be followed and regards to 4.9.6 the optional conditions we understand the methods of removal of processing is some blasting, whatever it takes backhoes to pick it up, trucking it off site, hours of operation are Monday to Friday from 7 a.m. to 5 p.m.; there are going to be no new temporary structures, the routes transporting material are thru Ammo Road out to Bangor, by truck. Depth of excavation in the neighborhood of 120 feet. Temporary or permanent drainage will be addressed as submitted in the plans. Disposition of stumps, brush, boulders will be by grinding. Reclamation of the material use as drainage protection. Cleaning, repairing and re-surfacing of the streets as needed which have been adversely affected by the said activity. Member Syversen stated he would encourage you to be cognizant of the easement condition on your neighbors. Also that the surety

will be posted with the code enforcement people, under Article 4.9.7.

Member Cavauagh seconded this motion made my Member Syversen.

Chairman Caliendo asked if we need to discuss this. He would note in our motion that we did not limit you in surface area, we left it. Sensing no further discussion.

Chairman Caliendo called for a vote all in favor: Member Syversen yes, Member Cavanaugh yes, Member Avery yes, Member Frazier yes, Member Meo yes, Member Nelson yes, Chairman votes yes. The vote was 7 in favor and none against.

3. NEW BUSINESS

A. Home Occupation Permit – Roberta Jeffery-Gant – Request for home occupation permit for therapeutic massage in her residence located at 186 Western Avenue in a Residential B District (tax Map 30, Lot 35) – Public Hearing

Chairman Caliendo opened the public hearing, stating that the format was the same, first hearing from proponents then opponents, then anyone with general questions or comments.

Roberta Jeffery-Gant of 186 Western Ave, spoke about her proposed project. This is a therapeutic massage business. She stated this would be a part-time situation until she builds her clientele. There would be no outside employees, and would take up one room in her home. She is currently employed full time outside the home, so this would be an hour in the evenings, and Saturdays. FedEx could be making a delivery once a month. Hours of operation would be one client per evening probably 6:30 to 8 p.m. and Saturday from 9 to 6 p.m. There is adequate parking and an area to turn around in her yard.

Yann Kaloustian 193 Western Avenue spoke in favor of the application.

Public hearing was closed.

The Board discussed the location of the proposed home occupation. They noted that a home occupation permit is issued to the business owner and no longer runs with the land. They verified that less than ten trips were to be generated daily for the business and that no outside employees were to be involved. They verified that there was ample parking available. They verified that no outward evidence of the home occupation would be observable.

Member Avery made a motion to approve the application, this motion was seconded by Member Cavanaugh the vote was seven in favor and none against the motion to approve the application for a home occupation.

B. Site Plan Review/ Final Subdivision Plan Review – Kevin Ireland – Request

for construction of a 4,300 sq. ft., six-unit, townhouse building for multi-family residential use located on Mayo Road in a Residential B District (Tax Map 6, Lot 32) – Public Hearing

Chairman Caliendo asked if this application has been noticed. Mr. Osborne stated that it had. Chairman Caliendo asked to hear from proponents then opponents, then anyone with general questions or comments.

Public Hearing was opened.

Jeanna DeTour, PE of Carpenter Associates spoke for the applicant. Ms. DeTour stated that this is a proposal for 4,200 square foot, two-story townhouse building in a residential B district on a 1.4 acre lot. Six units with only external access and no interior access between units. The building is 31 feet in height. A 6-inch water line and a fire hydrant along with under ground utilities are also proposed. She noted that on-site waste disposal is proposed and that it was adequately sized for the number of bedrooms proposed for the project.

Public hearing was closed as no one else wished to speak and Chairman Caliendo asked for staff comments.

Mr. Osborne stated that this is a subdivision because of the 6 dwelling units in the building. The septic/leach field is under the paved parking area. This is a major subdivision. The fee in lieu of open space is \$2400.00. Condition on the approval of the septic system being approved by the town's plumbing inspector. There are 2 one bedrooms, and four 2 bedrooms.

The exterior lighting was discussed.

Member Avery made a motion that the application meets subdivision approval conditioned on receipt of a system design acceptable to the town. This motion was seconded by Member Meo, the vote was seven in favor and none against the motion to approve the major subdivision.

C. Zoning Ordinance Text Amendment – Town of Hampden – Request to amend Article 3.12 Industrial 2 District to specifically exclude mineral extraction from uses contemplated in the district – Public Hearing

Chairman Caliendo opened the public hearing, asking for proponents, opponents, then anyone with questions or comments.

There was no one wishing to speak or having comments on this item.

Chairman Caliendo closed the public hearing.

Mr. Osborne spoke about the text amendment. He stated that this item was sent to the

Planning Board, from the Town Council. What is being said here is, when the interpretation from Mr. Russell came through that the Industrial 2 District contemplated mineral extraction in the context of Industrial uses, I think that the Council and the town planner and the code enforcement officer, all of us, were pretty surprised at that. Our understanding was that the Rural District expressly contemplated mineral extraction, and, that was the presumption that, that was the part of town that mineral extraction in fact was allowed. The fact that it was allowed there and was not mentioned in the Industrial District would have lead us all to believe that that use was not allowed there (I2 district). Mr. Osborne pointed out there are only a few hundred acres of this I2 district in the Town of Hampden (600+-). The Council expressed some concern that the broad range of uses that this district allows is a unique situation. There is real concern, in their estimation, that they don't want to see a situation where large tracts of it are tied up for long periods of time in the mode of being an open pit, and not being able to provide any opportunity for industrial development. The kind of industrial development, that this district uniquely offers, where you can have uses that run the range from commercial and industrial uses, it is kind of a unique situation. If you look for example at the industrial park district you are pretty limited on how much retail activity you can do. If you look at the commercial service district you are limited on industrial activity you can do. You get up to 10,000 feet and all of sudden you are kind of cut off; you can't do more than that. So this zone does offer some unique things that other districts don't. The Council expressed concern that in fact this area be preserved to be that range of commercial and industrial uses, but not to be tied up in mineral extraction. They viewed this amendment as a clarification to what everybody's understanding has been to the ordinance, that in fact that the use was to be segregated to the rural district and not contemplated in the industrial districts. So they have sent this to you (the Planning Board) for a recommendation, subsequent to your recommendation they would take up this matter at a subsequent council meeting, and make a final decision as to whether or not the ordinance should be amended or not. But they are looking for your recommendation. He would also note that the planning board's ordinance committee discussed this earlier this evening, and it would be good to report on what their findings were.

Chairman Caliendo asked who the Chairman was of the ordinance committee.

Member Avery is the chairman of the ordinance committee and he reported that the Planning Board ordinance committee met prior to this meeting this evening. They almost ran out of time in discussing this, it is not a straight forward issue. They did come to a unanimous vote/decision to send this item back to Council with an "ought not to pass" as written (of course). Several different thought processes are behind this. Actually Chairman Caliendo, with your experience with these issues and the ordinance we are working with, maybe you could address it a little better. Well with respect to when this particular item was first written, item 3.1.2.2 read, under permitted uses, prior to this: commercial and industrial uses, take out restaurant, accessory uses or structures, and so on. What I understand is that if a use is not expressed then in the past, it's been presumed it's not permitted, if it's not explicitly mentioned in here.

But of course our town counsel has come back with a different opinion. Member Avery corrected himself stating the town attorney Mr. Russell, has come back saying that the term "industrial uses" is so wide spread that it does, or could be interpreted as being included.

Chairman Caliendo said unlike the other wording in the other zones, which are more concise or precise, the wording for this particular district was rather vague and or broad. That was the basis for Tom Russell's interpretation that it was a permitted use. It does not change the fact that the history or tradition of the interpretation by the town fathers and the planning board has not been for the most part, traditionally that: if it's not in there it's not permitted. So the decision that the ordinance committee came to tonight, there is no right answer, there is no wrong answer, it's a difference of opinion of what direction we want to go in. Do we want to take the traditional, do we agree with tried and true tradition that if it's not in there (ordinance) it's out. In that case we would send this back to the town council with an "ought to pass" recommendation, or is our interpretation of industrial use permitting mineral extraction.

Member Avery stated that one of the thought processes is that if we do send it back to the town council it doesn't necessarily mean... they could vote either way. The other thing that we were discussing was sending it at the time to our comprehensive committee to take a look at how this fits in with the comprehensive plan. We would have to turn it around fairly quickly. We would like to get some input from that aspect.

Chairman Caliendo stated, so we ended up having a three to zero vote of the ordinance committee this evening, that of course this is a permitted use in the industrial zone, how much more industrial can you get. Mineral extraction located on the perimeter of the town, away from residential use, where any noise or pollution, light, traffic is away from the residential centers of the community. It's almost written for an industrial zone, the use. It's going against the grain. To start applying it out, would you want a quarry next to your rural residential neighborhoods, say Aaron's Way, or

Member Meo was speaking (was unable to hear what she had to say on the tape).

Chairman Caliendo stated that some of the feedback that Mr. Osborne brought up was very valid, he does not want to sound like we are trying to shove this through. There is a limited amount of Industrial acreage in the Town of Hampden. 272 acres he thinks, in the entire community.

It was in the Comprehensive Plan. We did review the town's comprehensive plan, and it speaks specifically to the Ammo Industrial Park, where right now current, right now it's what is called an un-serviced Industrial Park meaning it has no utilities, no water, no sewer. There is the intent at some future point, it is hoped, that that can become serviced by public utilities become a serviced industrial park. The town fathers, thinking this though about tying up the limited industrial acreage with a quarry or pit has some validity, but perhaps they missed the magnetism that is already tied in the ordinance. That it's a three year and three year process, which in the scheme of industrial, is that a

sufficient period of time for tying things up. Not to be sarcastic, we have had just a tremendous influx of businesses coming into Hampden seeking industrial land for uses. That was sarcasm. He looks to the rest of the board what's your pleasure what's your opinion.

Member Meo asked if mineral extraction is now permitted in the Rural zone.

Chairman Caliendo stated that yes it is. In Rural only, unless we accept the interpretation of the town's attorney, and that is why this is before us tonight is to formalize yea or nay. Keeping in mind whatever decision we make here it is a recommendation it is not set in stone. The town council can make any decision they want, based on our feedback or whatever.

Industrial 2, there are three industrial districts, industrial A, Industrial B, Industrial 2.

Member Avery stated Industrial 2 is the Ammo Park.

Mr. Osborne stated that it is the Ammo Park, it is also the Old LL Bean property that is now owned by the town and it's also several lots that are peripheral to the north end of the Ammo Park, like Mr. Cox's property.

Chairman Caliendo stated that we are under a time frame and need to do something tonight to pass back.

Mr. Osborne said from the date the town council sends you one of these things, there are 45 days to respond. Given the time line here, it would be sensible for whatever you do to go ahead and send a recommendation back on this one tonight if you are ready to do that. If you had thoughts of doing some work, subsequent to this, you are certainly free to do that. Both the council and the planning board can originate proposed text amendments. There would be no point in creating a lag period.

Mr. Osborne also pointed out that Councilor Murphy is here tonight, if he wanted to say anything or not.

(could not hear the response)

Member Avery asked Mr. Osborne what it said under the Rural District. It explicitly says..

Mr. Osborne stated it called it mineral extraction. It is a conditional use in that district.

Member Avery stated that if you wanted to send this back with clear language that we wanted to allow mineral extraction in this zone, we could simply state that, along with take-out restaurant, accessory uses and so on. Rather than saying except.... That's another option.

Mr. Osborne stated probably what you would do is send back (intact) what the council sent to you, then you could basically just strike the word excluding, send a second one back (to council) with an ought to pass.

There was some discussion on the tape but un-auditable.
Member Avery thought was it would remove the question of this mineral extraction. This caused us to get an opinion from the town attorney.

Chairman Caliendo agreed with Member Avery, but stated the only thing that bothered him about that it starts the slippery slope here, of well, what else do you have to name. How can we be all things to all people in naming to generate a list of what our approved industrial uses are. Item by item, is smelting industrial?

Member Avery stated that maybe what we need to visit is the definition of industrial use.

Chairman Caliendo agreed, just for information, after we address this issue, I am going to ask staff to set up a comprehensive planning committee meeting, to bring a list of these issues, definitions for industrial like we talked about at the meeting, so we can try to be pro-active.

Member Avery agreed with Chairman Caliendo this is not the place to start listing out every possible industrial use that we might be able to think of.

Chairman Caliendo stated it would give the town planner a chance to do some research on how other communities define it.

Member Avery stated then put it in the definitions, so that then when we say industrial use anywhere in our ordinance, go to the definition for more definitive explanation of what it is.

Member Syversen asked if we could look at it in two points. The intent of what they are sending us is not to have anymore mineral extraction.

Mr. Osborne also pointed out that it's retro-active.

Chairman Caliendo stated if the town council takes the wording as submitted here, Mr. Thibodeau's project would be DOA.

Member Syversen said that the second part of their intent was, did they express that adequately, by giving us this.

There was some discussion that did not record (in-audible).

Member Syversen was speaking but was not audible on the tape recording.

Chairman Caliendo stated to Member Syversen that after we deal with this issue I am

going to direct Mr. Osborne to come up with a comprehensive committee to look at, to come back to industrial and make a definition for industrial and see which zones we are going to recommend those definitions apply to. Right away.

Member Syversen asked if we could vote on it in two parts.

Chairman Caliendo stated that as far as the council is concerned what we will be doing here, unless we follow Member Avery's concept, is the first thing we have to do is send it back yea or nay. On what has been presented to us. Then if we want to, the second part of it, we could send them a recommendation for new text on this issue or we could simply give Mr. Osborne a memo to pass to the council on what our thoughts were on sending them back an ought not to pass.

What does the town have against mineral extraction?

Chairman Caliendo stated he did not know.

There was some more discussion but was in-audible on the tape.

Those areas you just described are already open to pits.

Member Syversen was speaking but unable to hear what was said on the tape.

Someone described the Ammo Park as a dump.

Mr. Osborne stated that you should be careful in describing it. Mr. Osborne pointed out the Larkin building alone is a million dollar facility, you can't, (the one Thibodeau bought) their water tower looks like it could use a little adjustment. The Freightliner facility out there as well. There are some modern new things out there, it's not like it is an ammo dump, it isn't. Chairman Caliendo read earlier in the comp plan that one of the things the comp plan alluded to about the Ammo Park area was that was an area slated for future of expansion of urban services. The hope was that, part of reason it's not zoned with the industrial park zoning, but is in this I2 zone is that, there were zoning issues they could not overcome because of private streets, no frontage, that kind of thing. The Comp Plan very clearly says that it is the hope that there will be a full range of urban services brought in to all that area that's zoned I2.

There was some more discussion that the tape did not get.

If this thing does, or does not go through, and the council changes it, and puts this wording in, thanks for the recommendation, why did we put Thibodeau through all the expense he has gone through, to do what we gave him permission to do tonight.

Member Meo spoke, but was unable to hear on the tape what she had to say.

More discussion on the issue of what the council could do with the recommendation.

Mr. Osborne stated never mind the retro-active piece, the first thing I would say is that our first contact with Mr. Thibodeau was last summer, and we expressly told them then that this use is not contemplated in this district. They said why don't you work with us to see if we could do some kind of an amendment to the I2 district, to specifically add mineral extraction to that district so that we could do this.

At a staff level and council level that was reviewed, and the council said no we are not going to do that. The fact that we subsequently got an application around Christmas time, Thibodeau knew the town had issues about this, but they went out and pulled together a full application anyway. Put it on Rosemary's desk Christmas week. They had their attorney looking at this, and figured that if they did get turned down on the basis of the use question, they had a pretty good shot of arguing. Because you go to the zoning board they are supposed to err on the side of the applicant if there are questions not to the town. They felt confident they had a good shot there. When Mr. Russell looked at it, when we asked him, once we got an application, he agreed that that language was plenty ambiguous.

So, here you are tonight, you have reviewed this Thibodeau application and given it a conditioned approval but, nevertheless the Council wants you to look at this question, and give a recommendation as well.

I think the fact that it may turn out to be retro-active, and so forth really isn't your thing. Your thing is as far as what you are challenged with is to just give your honest opinion as to what you think of this amendment, and send it back to the council in a timely matter.

Chairman Caliendo stated, like he said in the beginning, it's not like its right or wrong, it's what you think. We all have different opinions. Make it very clear that custom and tradition has been that if it's not spelled out, it's turned down; it's not a permitted use. In this particular instance, I think that leaving it out was wrong, I would vote to send it back with an ought not to pass recommendation.

I think that Member Avery's point was that we should be a little pro-active and then send back to them 3.1.2.2., with the word except changed to included; commercial uses and industrial uses including mineral extraction.

Member Avery stated that he is not comfortable naming all of these industrial uses, whether they fall under industrial uses. In hind sight I would prefer to see industrial uses defined explicitly elsewhere in our ordinance.

My recommendation right now is to send this back to council with an ought not to pass. If they want to define industrial uses...

Chairman Caliendo asked if anyone wanted him to read the paragraph in here on industrial areas, from the comprehensive plan.

This is from your 2001 comprehensive plan, industrial areas... Industrial areas are

classified as serviced and un-serviced. Serviced industrial areas are which have available sewer and water is intended for clean industrial operations having few if any objectionable impacts. Un-serviced industrial areas are designed to provide larger locations for industrial uses and do not require or seek the amenities of industrial parks. The one exception to these two industrial districts is the Ammo Industrial Park. Presently that area has no public access or sewer and water utilities, it is our intent that at some future date, those utilities would be provided and that some of the existing streets could be accepted. At that time the area should be re-designated as a serviced industrial area. The industrial areas should be limited to that area adjacent to the interstate and the Route 202 by-pass, which will limit their adverse impact on residential properties.

That's all it says.

That's pretty clear as far as it takes it.

Chairman Caliendo asked what's our pleasure.

More discussion that was not picked up on the recording tape.

Mineral extraction is an industrial use.

Member Cavanaugh made a motion to send this back to council with an ought not to pass recommendation. Seconded by Member Syversen. Chairman Caliendo asked for the vote, Member Cavanaugh yes, Member Syversen no, Member Nelson yes, Member Meo no, Member Frazier yes, Member Avery yes, Chairman votes yes, the motion passes, 5 in favor and two against.

Chairman Caliendo asked if we just want to let it go at that, or do we want to send some message to council by means of a recommendation for wording or...asked staff to pass on what our philosophy was in dealing with this.

More discussion that was not audible on the tape.

Chairman Caliendo and other members were discussing mineral extraction.

Chairman Caliendo asked the town planner to put together some thoughts and notes so that we can have a comprehensive planning committee meeting to come up with some recommendations to be done in time for our next regular meeting. To clarify the definition of industrial and if you would be so kind as to prepare some kind of memo to pass to the town council ordinance committee, that this is what our next step is, we are going to do this, we are not just saying no. We would like to have it before our next regular scheduled meeting to come back at them with some suggestions on how to deal with this. Rather than react to it.

Mr. Osborne gave his assent.

Member Frazier spoke but was not audible on tape.

5. STAFF REPORT

Mr. Osborne told the planning board he is on vacation the following week.

Chairman Caliendo asked who is on the comprehensive committee, Member Syversen is Chair, Member Meo; the new Members were invited for the time being to attend both comprehensive plan and ordinance committee meetings.

Next months agenda has only a few items on it.

6. BOARD MEMBERS CONCERNS

7. ADJORNMENT

The Planning Board meeting adjourned at 11:05 p.m.

Respectfully Submitted,

Michael Avery, Secretary